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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DERRICK FRANCOIS HAGUE,

Defendant and Appellant.

E064748

(Super.Ct.No. FWV1502272)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael A. Smith, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed with directions.

Laurel Simmons, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Derrick Francois Hague was charged by felony complaint with bringing controlled substances into a jail. (Pen. Code, § 4573, count 1.)¹ The complaint also alleged that defendant had one prior strike conviction (Pen. Code, §§ 1170.12, subds. (a)-(d), & 667, subds. (b)-(i)) and had served one prior prison term (Pen. Code, § 667.5, subd. (b)). Pursuant to a plea agreement, defendant pled guilty to count 1. The parties stipulated that the preliminary hearing transcript provided a factual basis for the plea. The court immediately sentenced defendant to the agreed upon term of two years in state prison, with 152 days of custody credits. Pursuant to the plea agreement, the court dismissed three other cases, stated that case No. “MSV1303879 was terminated unsuccessfully,” and reduced the conviction of Health and Safety Code section 11377, subdivision (a), from a felony to a misdemeanor in case No. FWV1102169. Defendant subsequently filed a petition for resentencing pursuant to Penal Code section 1170.18, which the court denied. Defendant appeals from the denial of his petition for resentencing. We affirm.

PROCEDURAL BACKGROUND

On September 4, 2015, defendant entered a plea agreement and pled guilty to one count of bringing controlled substances into a jail. (§ 4573.) The court sentenced him to two years in state prison in accordance with the plea agreement.

On October 22, 2015, defendant filed a petition for resentencing, pursuant to Proposition 47 (effective November 5, 2014). (§ 1170.18.) “Proposition 47 makes

¹ All further statutory references shall be to the Penal Code, unless otherwise indicated.

certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors).” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.)

“Proposition 47 also created a new resentencing provision: section 1170.18. Under section 1170.18, a person ‘currently serving’ a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47.” (*Id.* at p. 1092.)

On November 6, 2015, the court found that defendant was statutorily ineligible due to the nature of the charges and denied the petition.

DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and two potential arguable issues: (1) whether the court properly sentenced defendant; and (2) whether the court erred in finding him ineligible for resentencing under section 1170.18. Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has not done.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

Although not raised by the parties, we note an apparent clerical error. Generally, a clerical error is one inadvertently made. (*People v. Schultz* (1965) 238 Cal.App.2d 804, 808.) Clerical error can be made by a clerk, by counsel, or by the court itself. (*Ibid.* [judge misspoke].) A court “has the inherent power to correct clerical errors in its records so as to make these records reflect the true facts.” (*In re Candelario* (1970) 3 Cal.3d 702, 705.)

In this case, the court neglected to dismiss the prior prison allegation (§ 667.5, subd. (b)) and the prior strike allegation (§§ 1170.12, subds. (a)-(d) & 667, subds. (b)-(i)). The plea agreement stated that defendant would plead guilty to bringing controlled substances into a jail (count 1), in exchange for a specified term and the dismissal of the remaining “counts and special allegations.” Defendant pled guilty to count 1, but the court did not dismiss the remaining allegations. Nonetheless, the minute order states that the court ordered the prior strike and prison prior stricken. Neither party mentioned the court’s failure to dismiss those allegations, below or on appeal, and the abstract of judgment does not reflect those allegations. Thus, the record indicates that the parties intended those allegations to be dismissed. It is evident the court’s failure to order the dismissal was inadvertent. Accordingly, in the interest of clarity, we will direct the trial court to dismiss the allegations under sections 667.5, subdivision (b), 1170.12, subdivisions (a)-(d), and 667, subdivisions (b)-(i)).

DISPOSITION

The trial court is directed to order the dismissal of the prior strike conviction (§§ 1170.12, subds. (a)-(d) & 667, subds. (b)-(i)) and prison prior (§ 667.5, subd. (b)). In all other respects, the judgment is affirmed.

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HOLLENHORST
J.

We concur:

RAMIREZ
P. J.

McKINSTER
J.